

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TAMIKA DRUMMOND

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V.

*

No. 20-CV-01286

PHOENIX RECOVERY GROUP
DBA TOLTECA ENTERPRISES
INC., ET AL

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**MOTION FOR A MORE DEFINITE STATEMENT, TO DISMISS
FOR LACK OF PERSONAL JURISDICTION, AND TO DISMISS
FOR LACK OF PROPER SERVICE OF PROCESS**

Defendant files this motion for a more definite statement under Rule 12(c) of the Federal Rules of Civil Procedure. Defendant moves to dismiss this lawsuit on because there is a lack of personal jurisdiction over the Defendant under Rule 12(b)(2), Federal Rules of Civil Procedure. Defendant moves to dismiss the suit under Rule 12(b)(4), (5) because the summons is substantively defective.

A. Introduction

1. Plaintiff is Tamika Drummond.
2. Plaintiff sued this Defendant under the Fair Credit Reporting Act, 15 USC §1681, et. seq., (the “FCRA”).
3. The Complaint against Defendant is so vague that Defendant is unable to file a responsive pleading. Therefore, the court should require Defendant to amend its Complaint concerning Defendant with a more definite statement of the suit.
4. In ¶5e, the Complaint names “Phoenix Recovery Group doing business as Tolteca Enterprises Inc.”, a domestic corporation conducting business in the State of Texas. As explained herein, there is no such domestic Texas corporation.

B. Grounds for a More Definite Statement

5. The suit against Defendant does not allege or provide fair and adequate notice as to when Trans Union LLC purportedly forwarded the Plaintiff's consumer dispute about a debt on her credit file to Defendant and the suit does not allege or provide fair and adequate notice as to when Defendant received such information from Trans Union. Also, Plaintiff's Complaint fails to allege or provide fair and adequate notice when Defendant allegedly failed or refused an erroneous notation on Plaintiff's credit file. As a result of these deficiencies, Defendant cannot determine when any alleged cause of action accrued and that directly affects Defendant's ability to claim a statute of limitations defense.

C. Grounds for Lack of Personal Jurisdiction &

6. As is more particularly shown in the attached declaration, there is no dba named "Tolteca Enterprises Inc." Nor is there any domestic corporation named "Phoenix Recovery Group".

7. Because there is no existing corporation named "Phoenix Recovery Group" there can be no personal jurisdiction over a non-existing corporate entity.

8. Furthermore, the Defendant has not been properly served in that Frank Gamboa is not a registered agent for process for the Defendant under any name mentioned in Plaintiff's lawsuit. *See*, Attached Declaration and Doc. #19, Summons. Consequently, this lawsuit should be dismissed for insufficiency of process or insufficiency of service of process and for lack of personal jurisdiction. Rule 12(b)(2), (4), and (5), Federal Rules of Civil Procedure. When service of process is insufficient, the court may dismiss the suit or quash the service. *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 886 (8th Cir. 1996).

9. The assumption of jurisdiction over Phoenix Recovery Group violates principles of due process under Art. 5, 14, Constitution of the United States.

WHEREFORE, this Defendant “Phoenix Recovery Group” asks the court to dismiss this lawsuit.

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Enterprises Inc.

Declaration Under Penalty of Perjury

I, Thomas A. Clarke, attorney at law, Texas Bar No. 04318600 am admitted to practice before this court. I have personal knowledge of the following and the information is true and correct. There is no Texas corporation named “Phoenix Recovery Group” and there is no Texas assumed name “Tolteca Enterprises Inc.”. Furthermore, Frank Gamboa is not a registered agent with the Texas Secretary of State for Phoenix Recovery Group and/or Tolteca Enterprises Inc. I am well acquainted personally with the foregoing facts and they are true and correct.

S/Thomas A. Clarke

Dated: March 17, 2021

CERTIFICATE OF SERVICE

I certify that on March 17, 2021, St. Patrick’s Day, the foregoing was filed with the court’s CM/ECF electronic filing system which will give electronic notice of this to Plaintiff’s attorney of record, Michael B. Halla.

S/Thomas A. Clarke

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**ORDER ON THE MOTION FOR A MORE DEFINITE STATEMENT, TO DISMISS
FOR LACK OF PERSONAL JURISDICTION, AND TO DISMISS
FOR LACK OF PROPER SERVICE OF PROCESS**

After considering the motions to dismiss and the response, the court GRANTS the motion and dismisses Plaintiff's lawsuit.

Signed on _____, 2021.

U.S. District Court Judge Presiding